IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1411 OF 2006

M/s. Krystal Stone Exports Ltd. & Anr. ... Petitioners

Vs.

State of Maharashtra & Ors. ... Respondents

Mr. A.K. Tripathi i/b S.A. Tawate for the petitioners.

Ms. M.M. Deshmukh, A.P.P. for the State.

Mr. P.S. Dani for respondent 4.

**CORAM : SMT. RANJANA DESAI, J.**

**DATED : 14TH DECEMBER, 2006.**

**P.C. :-**

1. The petitioners are accused in Summary Case No.128 of 2006 pending on the file of the Chief Judicial Magistrate, Raigad at Alibag. The petitioners made an application under section 91 of the Code of Criminal Procedure (for short, “the Cr.P.C.”) for production of documents by the complainant. The case of the petitioners is that in the course of payment of rental charges of the excavators, they had made several cash payments to the complainant between the period June, 1997 and April, 1998. However, the complainant has not made entries in respect

of the same in their cash books and in their ledger books. Hence, an application came to be made requesting that the court may direct the complainant to produce the cash books and the ledger books for the period 1/4/1997 to 31/3/1999. This application came to be rejected by the learned Chief Judicial Magistrate on 7/6/2006.

2. Being aggrieved by this order, the petitioners have approached this court. The petitioners have also prayed that the process issued against them be quashed. While rejecting the application, the learned Magistrate has observed and in my opinion rightly that the petitioners can prove their case by producing the receipts instead of calling the complainant to produce the cash books and the ledger books. The learned counsel for the petitioners relying on the judgment of the ***Allahabad High Court in Krishna Dayal v. Emperor, AIR (33) 1946 Allahabad 227*** and on the judgment of the ***Andhra Pradesh in K.V. Rama Krishna Reddy v. The State, 1975 Cri.L.J. 980*** contended that this court should, in the interest of justice, direct the complainant to produce the cash books and the ledger books.

3. I am not impressed by the submissions made by the learned counsel for the petitioners. I concur with the learned Magistrate that it is always open to the petitioners to produce the receipts in support of their

case. If the complainant has not produced the cash books and the ledger books, while appreciating the evidence, the learned Magistrate will take this into account. The necessary consequences would obviously follow. However, I make it clear that on this aspect, I have not expressed any opinion.

4. So far as the prayer for quashing of the order issuing process is concerned, in my opinion, no case is made out for it. It cannot be said that the complaint prima facie does not disclose an offence.

5. In the circumstances, the petition is dismissed.

[SMT. RANJANA DESAI, J.]